

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

WAUKESHA COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 09-CX-04

Complex Forfeiture: 30109

CITY OF WAUKESHA,

Defendant.

**AMENDED STIPULATION AND ORDER FOR
AMENDED JUDGMENT**

The State of Wisconsin commenced this action against the City of Waukesha to enforce the State's safe drinking water laws. The parties resolved the alleged violations by entering into a stipulation and order for judgment that was signed by the Court on April 7, 2009 (2009 Stipulation). The 2009 Stipulation required Waukesha to pay a \$55,000 judgment, achieve compliance with all federal and state drinking water radionuclide standards by June 30, 2018, and in the interim comply with other compliance targets required by the 2009 Stipulation.

Since entering into the 2009 Stipulation, Waukesha has sought a long-term supply of radionuclide compliant water through a Great Lakes diversion strategy that was ultimately approved by the Great Lakes – St. Lawrence

River Basin Water Resources Compact Council on June 21, 2016 and reaffirmed on May 4, 2017. Waukesha expects the diversion to be completed by September 1, 2023, and therefore cannot comply with the June 30, 2018 deadline. Waukesha also exceeded the weighted averaging compliance target set forth in the 2009 Stipulation as recently as December 2014. The parties have agreed to simultaneously resolve the prior exceedances of the weighted averaging compliance target and acknowledge the approval of the Great Lakes diversion project, and therefore agree to amend and supplement the 2009 Stipulation.

IT IS STIPULATED AND AGREED by the State of Wisconsin and the City of Waukesha (Defendant) that the 2009 Stipulation shall be amended and supplemented on the following terms and conditions:

1. Pursuant to discussions between the parties, Defendant acquired three deep well pumps and three submersible motors, at an estimated cost of \$250,000, to have available as standby pumping equipment for Wells No. 3, 8, and 10 to minimize the time needed for well pump and motor replacement. This equipment will be stored per manufacturer instructions within the treatment building at Well No. 8. Upon use of any of the replacement equipment, the Defendant shall immediately reorder such equipment to maintain its replacement capacity.

2. Defendant shall plan for and if necessary install interim radium removal equipment on Well No. 6 as set forth herein. The equipment shall consist of a leased radium treatment system using a selective media filter or equivalent treatment to remove radionuclides.

3. Development of the interim radium treatment system will involve the following two phases.

A. Phase I is system design and approval. The anticipated tasks to be completed in this phase, at an approximate cost of \$400,000, include the following over a 21-month period:

- Issue request for proposals (RFP) for design of temporary treatment equipment
- Issue RFP for design of building and site work for temporary treatment equipment
- Award design services and execute professional service agreements
- Initial design work for sizing of temporary equipment
- Site work and building design following sizing of equipment
- Obtain approval from Waukesha Water Commission for site/building to go to Waukesha Plan Commission
- Obtain approval from Waukesha Plan Commission for site/building
- Obtain approval from Waukesha Board of Zoning Appeals for any necessary variances
- Complete pilot testing if required by the Wisconsin Department of Natural Resources (DNR)
- Complete treatment equipment design
- Public Service Commission (PSC) Review for Construction Authority
- DNR review

- Complete bid documents equipment design
- Review of lease agreement of treatment equipment by attorney

B. Phase II is final approval, bid, and construction. The anticipated tasks to be completed in this phase, at an estimated cost of \$3,100,000, include the following over a 15-month period:

- Approval of lease agreement of treatment equipment by Waukesha Water Commission
- Approval of lease agreement of treatment equipment by Waukesha Board of Public Works
- Approval of lease agreement of treatment equipment by Waukesha Common Council
- Approval of Waukesha Water Commission to bid project
- Advertise, bid, and award construction contract by Waukesha Water Commission
- Approval of bid by Waukesha Board of Public Works
- Approval of bid by Waukesha Common Council
- Contact execution of construction contract
- Construction
- Punch list items
- Start up, testing, and commissioning

4. Development of the interim radium treatment system shall proceed in accordance with the following schedule:

- A. Initiate Phase I no later than October 1, 2020;
- B. Complete Phase I by May 31, 2022;
- C. Initiate Phase II no later than June 1, 2022 if, as of May 1, 2022, the Defendant's Great Lakes water diversion project

manager and construction manager (PM/CM) cannot certify that all of the Great Lakes water diversion project construction is under contract and is 50% complete; and

- D. If required to initiate Phase II under Paragraph 6.C. of this Amended Stipulation and Order for Amended Judgment, then complete Phase II, and start operation of the interim radium treatment system, by September 1, 2023.

5. Within 15 days after each applicable date specified in Paragraph 6 of this Amended Stipulation and Order for Amended Judgment, Defendant shall provide notice to Assistant Attorney General Bradley J. Motl, at the address below, as to whether or not the actions required by that date were completed.

6. Defendant shall provide public notice within one business day after each time Wells No. 3, 8, or 10 are taken out of service by conspicuously posting the notice on the official City of Waukesha website and shall continue to provide the public notice for the duration of the time the well is out of service.

7. Defendant shall send a copy of the annual report required by Paragraph 10 of the 2009 Stipulation to Assistant Attorney General Bradley J. Motl, at the address below, at the same time Defendant sends the annual report to DNR.

8. If Defendant sends DNR a notice under Paragraph 14 of the 2009 Stipulation, it shall send a copy of the notice to Assistant Attorney General Bradley J. Motl, at the address below, at the same time.

9. The date specified in Paragraph 7 of the 2009 Stipulation is changed from June 30, 2018 to September 1, 2023.

10. The date specified in Paragraph 13 of the 2009 Stipulation is changed from June 30, 2018 to September 1, 2023.

11. All provisions of the 2009 Stipulation amended by this Amended Stipulation and Order for Amended Judgment are superseded and no longer effective. All provisions of the 2009 Stipulation not amended by this Amended Stipulation and Order for Amended Judgment shall remain in effect and be enforceable.

Dated this _____ day of July, 2017.

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Wisconsin Attorney General

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Dated this _____ day of July, 2017.

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ORDER FOR AMENDED JUDGMENT

The Court approves the terms of the foregoing stipulation in *State of Wisconsin v. City of Waukesha*, Case No. 09-CX-04, which amends and supplements the stipulation approved by the Court on April 7, 2009 in this case and pursuant to which the City of Waukesha will take certain additional measures to achieve compliance with State radionuclide requirements and the April 7, 2009 stipulation. The Court therefore directs the clerk to enter the Amended Judgment incorporating the terms of the foregoing stipulation, and to docket the Amended Judgment.

This is a Final Order under Wis. Stat. § 808.03(1).

Dated this _____ day of _____, 2017.

BY THE COURT:

The Honorable Michael O. Bohren
Waukesha County Circuit Court